IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.136 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
H C TRADERS - Respondent(s)

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Appearance :
MS MM BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 03/10/2005
ORAL JUDGMENT
(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following question under Section 256(1) of the Income-tax Act, 1961

(the Act) at the instance of the Commissioner of Income-tax:

> "Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax liability pertaining to the last quarter is paid within the time stipulated for filing of return u/s 139(1) the provisions of section 43B cannot be made applicable?"

2. The Assessment Year is 1984-85 and the relevant accounting period is Samvant Year 2039.

3. Heard Ms.M.M.Bhatt, learned Standing Counsel for the applicant-revenue. Though served there is no appearance on behalf of the respondent-assessee.

4. Ms.M.M.Bhatt has fairly pointed out that the controversy involved in the present case stands concluded by a decision of the Apex Court in case of *Allied Motors (P.) Ltd. Vs. Commissioner of Income-tax*, [1997] 224 ITR 677 (S.C.).

5. In the circumstances, it is not necessary to set out the facts and contentions in detail.

Applying the ratio of the aforesaid decision to the facts of the present case, it is held that the Appellate Tribunal was right in law in deleting the disallowance made by the Income Tax Officer on account of unpaid sales tax applying Section 43B of the Act. The question referred to this Court is answered in the affirmative i.e. against the revenue and in favour of the assessee.

6. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**